(19,603.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 503.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

F. E. DEER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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1 THE STATE OF ALABAMA, }
Montgomery County. }

Organization of Court.

Be it remembered that at a term of the city court of Montgomery, begun and holden for said county at the court house in the city of Montgomery, State and county aforesaid on the 1st Monday in February in the year of our Lord one thousand nine hundred and two, it being the third day of said month—present the Honorable A. D. Sayre, judge presiding—the following proceedings were had and the following judgments were rendered to-wit:

THE STATE OF ALABAMA, }
Montgomery County. }

Justice's Court.

To any constable of said county:

Summon Louisville & Nashville R. R. Company, a corporation, to appear before me on the 4th day of February at 12 m. at my office to answer the complaint of F. E. Deer and then and there make return of this summons.

Issued 27th day of January A. D. 1902.

B. H. SCREWS, J. P.

Complaint.

Cause of Action.

The plaintiff claims of the defendant, a corporation, ($24.36) twenty-four & 36/100 dollars, due from it by account stated, on to-wit: the 18 day of November 1901.

The plaintiff further claims of the defendant ($24.36) twenty-four & 36/100 dollars for work and labor done for the defendant by the plaintiff on to-wit: during the month of Oct., 1901, at defendant's request, which sums of money with interest thereon are now past due and unpaid.

W. F. HERBERT,
Att'y for Pl'ff.

Executed by serving a copy — J. M. Falkner, att'y for L. & N. R. R. Co., January 27th, 1902.

W. B. GILMER, Constable.

2 THE STATE OF ALABAMA, }
Montgomery County. }

Appeal Bond.

Know all men by these presents: that we, the Louisville & Nashville Railroad Company and J. M. Falkner and Geo. W. Jones are held and firmly bound unto F. E. Deer his heirs, executors and administrators and assigns, in the full and just sum of sixty-five dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Signed with our seals and dated this 7th day of April, 1902.

The condition of this obligation is such, that whereas, on the 7th day of April 1902, B. H. Screws, a justice of the peace, in and for said county and State, at the suit of F. E. Deer against The Louisville & Nashville Railroad Company, did render judgment in favor of said F. E. Deer against said Louisville & Nashville Railroad Company for the sum of twenty-four and 36/100 dollars, besides five & 35/100 dollars costs of suit, and whereas the said Louisville & Nashville Railroad Company did on the 7th day of April 1902, pray for an appeal from said judgment to the next term of the city court of Montgomery of said county as well as a supersedeas of said judgment, both of which have been allowed on the entering into this obligation.

Now, therefore, if the said Louisville and Nashville Railroad Company will well and truly prosecute such appeal to effect and pay and satisfy such judgment as said city court of Montgomery shall render in the premises, then this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands and seals, this 7th day of April 1902.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By J. M. FALKNER, Its Attorney. [L. S.]
J. M. FALKNER. [L. S.]
GEO. W. JONES. [L. S.]

Approved, this 8th day of April, 1902.
B. H. SCREWS, J. P.

3 MONTGOMERY, ALA., April 7, 1902.

F. E. DEER
v.
LOUISVILLE & NASHVILLE R. R. COMPANY. } # 24.36. Before B. H. Screws, J. P.

Transcript of Docket.

Jan'y 27th / 02—Summons & complaint issued and executed.
April 7 / 02—On trial of this cause judgment is awarded plaintiff for $24.36 and $5.35 costs.
(Appeal taken to city court.)

B. H. SCREWS, J. P.

J. P. cost $5.35.

In the City Court of Montgomery, Ala.

F. E. DEER
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY. } Pleas of Defendant.

Comes the defendant in the above entitled cause and for answer to the complaint heretofore served on it in said cause says:

First. That it is not indebted to the plaintiff for the amount as alleged in the said complaint, nor in any other amount.

Second. For further answer to said complaint defendant says that it did, at one time, owe said plaintiff the sum of $24.36 for services performed by him during the month of October, 1901, but that prior to the commencement of this suit, towit, on November 18th, 1901, a suit was commenced in the justice of the peace court of L. L. Charles, in Washington county, Florida, in the case of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant and The Louisville & Nashville Railroad Company garnishee in which said suit judgment was duly rendered against the said defandant, F. E. Deer, and against The Louisville and Nashville Railroad Company as garnishee on the 7th day of January, 1902, in the sum of $19.98 and the costs, (amounting to $4.38) said judgment and costs aggregating the said amount of $24.36. And defendant avers that the garnishment summons in said garnishment suit of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant and Louisville & Nashville Railroad Company garnishee, was regularly served upon a business agent of said garnishee,
4 resident of the county in which said action was brought, as provided by the statutes of the State of Florida, and that the proceedings in said cause were conducted in strict accordance with the statute laws of Florida in such cases made and provided; that this defendant was compelled to pay, and did

pay, in satisfaction of the said judgment against it as garnishee, as aforesaid, into the said court of L. L. Charles, justice of the peace as aforesaid, the said sum of $24.36, prior to the commencement of this suit. And defendant avers that under the laws of the State of Florida the docket of a justice of the peace, or a certified copy thereof, is evidence of the matters therein stated, throughout said State; and defendant files herewith as "Exhibit A," and makes a part hereof, a duly authenticated certified copy of the docket of said justice of the peace, L. L. Charles, showing the proceedings had in said case of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant and Louisville & Nashville Railroad Company garnishee. And defendant avers that the statutes of the State of Florida, under which said proceedings in said case of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant and Louisville & Nashville Railroad Company garnishee were had, are as follows, to-wit:

"Process, How Served."

"1019. Upon a private corporation.—Process against a corporation domestic or foreign, may be served:

1st. Upon the president or vice-president or other head of the corporation, in the absence of such head:

2nd. Upon the cashier or treasurer, or secretary, or general manager; or, in the absence of all of the above:

3rd. Upon any director of such company; or, in the absence of all the above:

4th. Upon any business agent resident in the county in which the action is brought.

5th. If a foreign corporation shall have none of the foregoing officers or agents in this State, service may be made upon any agent transacting business for it in this State."

"1658. Service and contents of.—In all cases commenced by attachment, where property shall be attached and not retaken by the defendant, a notice of the institution of the suit by attachment shall be personally served upon the defendant, or shall be published once each week for three months in some newspaper in the county in which the suit is instituted.

"Such notice shall require the defendant and all other
5 persons interested to appear to the action. If the notice be a personal one, the time fixed for appearance shall be as in summons *ad respondendum*; and if it be published, the time fixed shall be the rule day succeeding the last publication.

"Service of the personal notice shall be made at the time fixed for service of the summons *ad respondendum*, and if made within the State, shall be made by the executive officer of the court, but if it be made out of the State, it may be made by any person, and proof thereof shall be furnished by the affidavit of such person before any judicial officer having a seal, in the State where such service is made. If the writ be issued by a justice of the peace or county judge, the publication shall be only for one month."

"1666. Right defined.—Every person who shall have brought a suit in any court of this State against any person, natural or corporate, shall have a right to a writ of garnishment under the circumstances and in the manner hereinafter provided, to subject any indebtedness due to the defendant by a third person, and any goods, moneys, chattels or effects of the defendant in the hands, possession or control of a third person."

"The officers, agents and employés of railroad companies shall be, as regards such companies, third persons, and as such shall be subject to garnishment after judgment against such companies."

"1686. Proceedings when defendant not to be found.—If the officer to whom any summons *ad respondendum* has been directed in a suit in which a writ of garnishment has been issued shall return that the defendant does not reside in the State, or if the officer to whom has been directed a writ of attachment in a suit commenced by attachment in which a writ of garnishment has also been issued shall not be able to find property of the defendant upon which to levy the writ of attachment, the plaintiff may give notice of the institution of such suit in the manner provided for giving notices of suits commenced by attachment."

"And the pleadings and proceedings, and entry of defaults and judgments shall be as in such cases of attachments.

"If the plaintiff in such case shall not give such notice within sixty days after the issuing of the writ of garnishment, the suit shall be dismissed upon motion of the defendant, or of the garnishee."

6 "An Act to Amend Section 1658, Revised Statutes, Relating to Notice of Suit and Service and Contents in Cases of Attachments."

Be it enacted by the legislature of the State of Florida:

That section 1658 of the Revised Statutes of the State of Florida be amended so as to read as follows:

"1658. Service and contents of.—In all cases commenced by attachment where property shall be attached and not retaken by the defendant a notice of the institution of the suit by attachment shall be personally served upon the defendant or shall be published once a week for three months in some newspaper in the county in which the suit is instituted; such notice shall require the defendant and all other persons interested to appear to the action. If the notice be a personal one the time fixed for appearance shall be as in summons *ad respondendum;* and if it be published the time fixed shall be the rule day succeeding the last publication service of the personal notice shall be made at the time fixed for service of summons *ad respondendum* and if made within the State shall be made by the executive officer of the court, but if it be made out of the State it may be made by any person and proof thereof shall be furnished by the affidavit of such person before any judicial officer having a seal in the State where such service is made. If the writs be issued